

1 result of this case that they didn't take it.
2 But I mean if you were to ask me, I would not
3 have remembered what this case was about. I'm
4 just trying to be precise, I guess.

5 JUDGE SIPPEL: No, you're doing --
6 you're testifying honestly. You're doing
7 everything everything I'm sure you're doing.
8 Go ahead.

9 BY MR. MOSS:

10 Q Mr. Donnelly, did Tennis Channel
11 ask for any feedback this time around as to
12 your equity analysis of their company?

13 A Again, yes, they asked if we were
14 given feedback on our analysis again.

15 Q And do you know whether or not
16 that feedback was ever provided?

17 A Ann Micka who worked for me had a
18 call with the channel again to through the
19 changes that we made to their model.

20 Q But were you on that call?

21 A I don't believe I was on this
22 call.

1 Q Did Ann report back to you?

2 A I'm sure she reported back to me,
3 yes.

4 Q And do you have any recollection
5 as to what her report was?

6 A I don't precisely remember what
7 the report was, no.

8 Q Mr. Donnelly, in conducting -- and
9 Ms. Micka helped you with this analysis this
10 time?

11 A Yes, she did. We kept the same
12 team on it.

13 Q In preparing this equity analysis,
14 did you or Ms. Micka or anyone else in the
15 Programming Division consider whether
16 accepting or rejecting this proposal would
17 have an impact on Comcast's affiliated network
18 including Golf and Versus?

19 A No, we would not have considered
20 that as part of an equity valuation.

21 MR. MOSS: Your Honor, pending
22 anything on cross examination, I have nothing

1 further for the witness.

2 JUDGE SIPPEL: Cross?

3 MR. SCHMIDT: Yes. We'd ask for a
4 break for lunch given the time. That ran a
5 little longer than we thought and there were
6 some new topics in there in the written
7 direct.

8 JUDGE SIPPEL: Do you have any
9 idea how long your cross might be?

10 MR. SCHMIDT: I think it will be
11 about an hour, probably less.

12 JUDGE SIPPEL: And it's what time?
13 It's 10 until 1.

14 Do you have any objections to
15 that, Mr. Carroll?

16 MR. CARROLL: Sounds fine, Your
17 Honor.

18 JUDGE SIPPEL: So be back at 5
19 after 2, okay? Thank you very much.

20 Sir, you're still under oath, so
21 when you go outside you can't discuss your
22 testimony with counsel. But you can certainly

1 discuss pertinent procedures and whatever else
2 suits you. Okay?

3 I'll see everybody at 5 after 2.

4 Thank you.

5 (Whereupon, at 12:48 p.m., the
6 hearing was recessed, to reconvene at 2:05
7 p.m.)
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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

(2:10 p.m.)

JUDGE SIPPEL: Whenever you are ready, Mr. Schmidt.

MR. SCHMIDT: Thank you.

JUDGE SIPPEL: Life's just as good as it was this morning.

MR. SCHMIDT: Good afternoon, Mr. Donnelly. We haven't met. My name is Paul Schmidt. And they may have told you this at lunch, but this is your lucky day because I'm 100 times more efficient than my partner Mr. Phillips in my questioning.

THE WITNESS: Thank you.

MR. SCHMIDT: So we will be brisk.

JUDGE SIPPEL: They are a team.

(Laughter.)

MR. SCHMIDT: We thought we were at the beginning, Your Honor.

(Laughter.)

MR. SCHMIDT: Things change over the course of a long trial.

CROSS-EXAMINATION

BY MR. SCHMIDT:

Q Mr. Donnelly, I'd like to ask you a little bit more detail about the work that you did evaluating the 2006 and 2007 equity offers from Tennis Channel. First of all, did you understand that Tennis Channel was required to make those offers under the terms of its contract with Comcast, correct?

A Yes, I do.

Q And Comcast was considering whether to accept equity in the Tennis Channel as the Tennis Channel existed in 2006 and then in 2007, right?

A That is correct.

Q As I understand your role in that process, you were not involved in any decisions regarding the cable sides' carriage of Tennis Channel. Is that correct?

A That is correct.

Q So you weren't looking at benefits to the cable side from this deal in terms of

1 issues like distribution?

2 A No, I would not.

3 Q You didn't look at whether broader
4 carriage of Tennis Channel would help Comcast
5 obtain new subscribers, did you?

6 A No. That wouldn't be my area.

7 Q Nor did you look at whether it
8 would help Comcast retain existing subscribers
9 who might otherwise defect to satellite or
10 somewhere else?

11 A Did not.

12 Q Have you ever seen that type of
13 analysis in the course of your work relating
14 to Tennis Channel?

15 A I have not.

16 Q You didn't consider whether
17 Comcast would be able to use Tennis Channel to
18 encourage analogue subscribers to upgrade to
19 digital?

20 A No. That is not part of my work.

21 Q And you didn't look at how much
22 more Comcast would have been able to charge

1 for its ad inventory that it otherwise held on
2 the Tennis Channel?

3 A No. None of those things would
4 have been things our group would do.

5 Q And you didn't rule out that those
6 benefits existed. They just weren't what you
7 were looking at in your analysis?

8 A It's not an area that our division
9 would have expertise in.

10 Q Are there any subsequent analyses
11 after 2007 that you have done regarding Tennis
12 Channel?

13 A After 2007?

14 Q Yes, sir.

15 A No, not that I am aware of, no.

16 Q So you played no role in
17 responding to or analyzing Tennis Channel's
18 offer to Comcast in 2009. Is that correct?

19 A No, none at all.

20 Q And you've not done any update
21 work in terms of comparing the fees that
22 existed for Tennis Channel in 2006 and 2007 to

1 the fees either that would be charged today or
2 that would have been charged under the 2009
3 proposal?

4 A I have not.

5 Q You haven't looked at the
6 programming improvements that Tennis Channel
7 has made to improve its value between 2007 and
8 2009, like adding more content and upgrading
9 the quality of its content?

10 A I have not.

11 Q You agree things like that can
12 improve the value of a network, correct?

13 A The value of the network would
14 depend upon the cash flow. So it's possible
15 that they could increase it or decrease it
16 depending upon how much money they spent for
17 it.

18 Q And that's not something you
19 studied?

20 A Not since 2007.

21 Q Just to give you one example, in
22 paragraph 9 of your testimony -- and you can

1 refer to it if you want, but you may be able
2 to answer this from memory -- you stated that
3 you thought Tennis Channel's advertising
4 projections in 2006 and 2007 -- you say it in
5 two places -- were above what you would expect
6 them to be. You have not done that analysis
7 as to 2009 or any point after, have you?

8 A I have not.

9 Q To your knowledge, has anyone ever
10 valued, anyone at Comcast ever valued, the
11 advertising rights that Comcast would get from
12 broader carriage of Tennis Channel?

13 A Not that I'm aware of.

14 Q As I heard in your direct
15 testimony, when you were looking at the
16 advertising value associated with Tennis
17 Channel in 2006 and 2007, you consulted with
18 a gentleman named Gene Pizzolata. Is that
19 correct?

20 A That is correct.

21 Q He does advertising work for the
22 Golf Channel. Is that right?

1 A That is also correct.

2 Q And, in your view, I take it, his
3 Golf Channel experience would bear on his
4 analysis of Tennis Channel advertising,
5 correct?

6 A Gene has been in the advertising
7 industry for a long time, both at the Golf
8 Channel and in broadcast. So I was expecting
9 him to bring that whole extent of his
10 experience to it.

11 Q But you wouldn't go to him for
12 something other than sports, correct?

13 A "Ever" is a very long time, but I
14 wouldn't normally do that.

15 Q You were going to him because of a
16 sports expertise?

17 A I was going to him because he had
18 some expertise in this area.

19 Q Including with the Golf Channel,
20 right?

21 A With the Golf Channel as well.

22 Q Now, it's the case, isn't it, that

1 sports networks sometimes compete for
2 advertising?

3 A They compete with advertising with
4 all the networks.

5 Q Including other sports networks?

6 A Certainly other sports networks as
7 well.

8 Q For example, are you aware that
9 Comcast a few years ago combined the
10 advertising sales staffs for Versus and the
11 Golf Channel into a single group?

12 A I am aware of that.

13 Q And that single group handled
14 advertising for both of those networks:
15 Versus and the Golf Channel?

16 A That's correct. We got some
17 efficiencies out of that, from a cross-side.

18 Q Efficiencies because there are
19 commonalities between those channels in terms
20 of the advertising work that they do?

21 A Efficiencies because also on the
22 cost side as well.

1 Q In both regards?

2 A That's correct.

3 Q When you conducted your analyses
4 of Tennis Channel's equity offers, as I
5 understand it, you conducted specific analyses
6 that showed that higher distribution for
7 Tennis Channel would lead to higher value for
8 Tennis Channel as a network, correct?

9 A That is generally correct, yes.

10 Q And, conversely, lower
11 distribution would lead to lower value,
12 correct?

13 A Again, depending upon the cost,
14 but in the model that we ran, we just looked
15 at, you know, three and a half million or
16 zero. So that's really the only scenarios we
17 ran.

18 Q And, as you got more, it increased
19 in value? As you got less, it had a lower
20 value, correct?

21 A That is correct.

22 Q And one way that distribution can

1 impact the value is that lower distribution
2 means lower value of advertising, correct?

3 A With lower distribution, you would
4 expect to have lower advertising.

5 Q I think we saw that in exhibit
6 106, the handwritten notes that Mr. Moss
7 showed you where you communicated to Tennis
8 Channel that one of the reasons Tennis
9 Channel's advertising didn't track up with
10 Golf's was because Tennis Channel has fewer
11 subscribers, correct?

12 A That would have been one of the
13 reasons.

14 Q Ad sales are critical to a network
15 like Tennis Channel that is an as-supported
16 network, correct?

17 A Ad sales are important to all
18 networks.

19 Q You weren't with Comcast when Golf
20 and Versus were launched, were you?

21 A You know what? I don't exactly
22 know. I'll answer it this way. I started

1 with Comcast in 1996. I can't tell you
2 specifically when Golf and Versus launched.

3 Q They were launched in 1995.

4 A Then I was not.

5 Q I'll represent to you that that
6 was the case.

7 A Then I was not.

8 Q But you know that Versus was given
9 broad carriage by Comcast from its launch?

10 A Yes, I do.

11 Q And you know that Golf was
12 initially launched as a pay-extra, a la carte
13 channel. And then when that didn't out as
14 well for Golf, it was given broad carriage by
15 Comcast?

16 A Okay. I don't remember all the
17 details, but I know that launch support was
18 paid.

19 Q Okay. Is what I said with respect
20 to Golf Channel incorrect, to your knowledge?

21 A It is not incorrect, to my
22 knowledge.

1 Q Are you aware that Golf Channel
2 only obtained exclusive PGA rights in 2006?

3 A Right, beginning in 2007. We did
4 the contract in '06 and I think began to air
5 in '07.

6 Q And before that, it had less
7 valuable content on Golf Channel than the
8 exclusive PGA rights, correct?

9 A Golf Channel had a lot of valuable
10 content throughout.

11 Q Would you agree with the statement
12 that it had more B list content and more
13 infomercials because it acquired the exclusive
14 PGA rights in 2006 that started in the 2007?

15 A No, I wouldn't believe -- I
16 wouldn't -- in my tenure here since 2005 in
17 the prior division, I don't believe that there
18 was a lot of infomercial and a lot of B list.
19 I think there were a lot of really good -- we
20 had a lot of good rights deals. PGA was
21 better, clearly.

22 Q PGA improved the value of --

1 A PGA was a better lights deal, but
2 there was a lot of good content on the Golf
3 Channel.

4 Q And that whole time I'm talking
5 about, before the PGA deal, Golf Channel
6 enjoyed very broad coverage across the --

7 A Well, across the whole operation.

8 Q I'm focusing on Comcast.

9 A Yes, they did.

10 Q It had very broad coverage from
11 Comcast, correct?

12 A Yes, it did.

13 Q I would like to show you an e-mail
14 that you have been copied on.

15 MR. SCHMIDT: May I approach, Your
16 Honor?

17 JUDGE SIPPEL: You may.

18 MR. SCHMIDT: This is an e-mail
19 that is already in evidence.

20 JUDGE SIPPEL: Is that in this
21 black notebook as well?

22 MR. SCHMIDT: It should be in the

1 black notebooks, Your Honor. Yes, sir.

2 BY MR. SCHMIDT:

3 Q As you look at this Mr. Donnelly,
4 I would like to ask you about the top e-mail,
5 which is dated April 16th, 2007 to Mr. Shell.
6 And you were shown as a copy on that e-mail.
7 Do you see that?

8 A Yes, I do.

9 Q The title of the e-mail is "TGC."
10 That's Golf Channel, right?

11 A That is correct.

12 Q And he's talking about the ratings
13 on the Golf Channel, correct?

14 A Yes, he is.

15 Q He states, "I am really concerned
16 with the ratings here outside of PGA." And
17 that is something networks care about in your
18 experience, isn't it, their ratings?

19 A Yes.

20 Q And Mr. Shell is expressing, as I
21 understand it, concerns about the ratings of
22 Golf Channel programming outside of its PGA

1 events. Is that your understanding?

2 A Yes. He's -- I don't know if he's
3 comparing it to, you know, expectations to
4 budgets to whatnot, but he seems to be
5 somewhat concerned about the ratings outside
6 the PGA.

7 Q He states, "It appears that our
8 PGA halo has completely disappeared." Do you
9 see that?

10 A Yes, I do.

11 Q That's the idea that having the
12 more valuable PGA content would lead to higher
13 ratings across the board, right?

14 A That's what "halo" would be.

15 Q And he's saying that's completely
16 disappeared?

17 A During the week of 4-2 to 4-8,
18 that's what he's saying, at least.

19 Q Thank you. Have you seen ratings
20 concerns like that expressed before with
21 respect to Golf Channel?

22 A Ratings -- you know, for all of

1 our networks, we have seen times where they've
2 been up and down and there's been concerns.

3 Q Let's go back to your 2006 and
4 2007 equity offer work. And I would like to
5 orient you specifically to your work on Tennis
6 Channel's 2006 equity offer.

7 A Okay.

8 Q You talked about this on direct.
9 And I would like to ask you a little bit more
10 about it. In between the time of those two
11 offers, Comcast considered the possibility of
12 what I'll refer to as the three-way deal,
13 where it would exchange equity -- it would
14 take equity from Tennis Channel, pass it to
15 USTA. In return, it would get U.S. Open
16 content from USTA. And it would give Tennis
17 Channel increased distribution. Is that a
18 fair description of the three-way deal?

19 A I think that's an accurate
20 description, I think.

21 Q Okay. I would like to show you an
22 e-mail on that.

1 MR. SCHMIDT: If I may approach,
2 Your Honor?

3 JUDGE SIPPEL: You may. Is this
4 the Tennis exhibit?

5 MR. SCHMIDT: Yes, this is Tennis
6 exhibit 32.

7 JUDGE SIPPEL: Thank you.

8 MR. SCHMIDT: So I said it for the
9 record because I'm not sure if I ever did it
10 for the last exhibit was Tennis exhibit 36.
11 I am turning now to Tennis exhibit 32.

12 JUDGE SIPPEL: Thirty-six was in
13 evidence, of course.

14 MR. SCHMIDT: Yes, sir. Both are.

15 JUDGE SIPPEL: Okay. Thank you.

16 MR. SCHMIDT: You're welcome.

17 Thank you, Your Honor.

18 BY MR. SCHMIDT:

19 Q I would like to direct your
20 attention to the first e-mail in this chain,
21 which starts about a third of the way down the
22 page, where Mr. Fein sends an e-mail to Mr.

1 Shell and copies Mr. Harvey. Do you see that?

2 A Yes, I do.

3 Q And, just so we have it, Mr. Shell
4 is the head of all programming at Comcast or
5 was at the time?

6 A That's correct.

7 Q And Mr. Fein and Mr. Harvey are at
8 Versus, correct?

9 A That is also correct.

10 Q And so Mr. Fein raises this idea
11 of the three-way trade that we have just been
12 discussing, correct?

13 A Yeah. Yeah, a little different
14 but similar.

15 Q Okay. And do you know of this
16 issue, this three-way trade, being raised at
17 a point in time earlier than the date of
18 Tennis Channel exhibit 32?

19 A I don't recall.

20 Q Do you know of it being raised in
21 the first instance by anyone other than Mr.
22 Fein?

1 A I don't know who raised it in the
2 first instance.

3 Q Okay. As far as you know, is this
4 the first instance it was raised: exhibit 32?

5 A This appears to be the first time
6 I have heard about it.

7 Q And you know of no other instance
8 when it was raised earlier than this?

9 A I'm not aware of any. I have no
10 idea.

11 Q Let's look on the back of the
12 page, if we could.

13 A On the back?

14 Q Yes. As I understand what Mr.
15 Fein is doing on the front of the document --
16 at least that's what the three-way deal would
17 be. And then he lays out what each party to
18 the three-deal would exchange as part of the
19 deal. And on the back, he says, "Tennis
20 Channel gets distribution and maybe gets a
21 small piece of the Open for a licensee fee to
22 us." Do you see that? Did I read that

1 correct?

2 A Let me just read that last
3 paragraph one more time, please.

4 Q Sure.

5 A (Perusing document.) Okay.

6 Q Under the three-way deal, what is
7 contemplated is that Comcast would provide
8 carriage, Comcast on the cable side would
9 provide carriage, to the Tennis Channel,
10 correct?

11 A Right.

12 Q And, in return, Versus on the
13 programming side would get U.S. Open content,
14 correct?

15 A It looks like eventually that's
16 where it would get to, right.

17 Q And you would not disagree with me
18 that U.S. Open programming for a channel like
19 Tennis Channel is some of the most valuable
20 programming you can get?

21 A That the USTA -- the U.S. Open?

22 Q For the Tennis Channel.

1 A The U.S. Open is good product for
2 the Tennis Channel.

3 Q And what Mr. Fein actually
4 suggests is Versus would end up with that
5 programming, but maybe they could give a small
6 piece of it back to Tennis Channel at a
7 charge, correct?

8 A Well, that was part of the
9 suggestion here. Like I said earlier, there
10 were a lot of different variations bantered
11 about on this.

12 Q So let's look at the next e-mail
13 in the chain. Mr. Shell replies to Mr. Fein.
14 And he adds you now to the list of the
15 recipients. Do you see that?

16 A Yes, I do.

17 Q He says, "I think this is worth
18 running with. Can you work with Kim and Joe
19 to work up a pro forma and present it to the
20 cable side?" So now he's brought you into the
21 conversation. And he's asking you to run the
22 numbers on this, correct?

1 A That's correct, with Kim.

2 Q So let's look at the numbers that
3 you ran. You mentioned on direct Ann Micka.

4 A Uh-huh.

5 Q She is on your team?

6 A She is on my team, uh-huh.

7 Q She is one of the best people on
8 your team?

9 A She is a good person. Yes.

10 MR. SCHMIDT: May I approach, Your
11 Honor?

12 JUDGE SIPPEL: You may. Thank
13 you.

14 MR. SCHMIDT: You're welcome.

15 BY MR. SCHMIDT:

16 Q This is Tennis Channel exhibit 33.
17 It's a document you were not shown on direct.
18 Have you seen Tennis Channel exhibit 33
19 before, sir?

20 A Let me just finish reading it,
21 please. (Perusing document.) Okay. Yeah.
22 I think I've seen -- I have seen this before.